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ABSTRACT

Eight issues concerning academic freedom are discussed. The issues are: (1) the question of who should have the right to decide what should be taught; (2) the extent to which school districts should impose specific restrictions on subjects discussed in the classroom; (3) the controversy over the rights of teachers to refuse to teach content that violates their personal beliefs; (4) the rights of teachers to invite a controversial speaker into the classroom; (5) the option of states or school districts to prohibit a teacher from using materials and methods other than those officially approved; (6) the freedom of teachers to express their personal opinions about controversial political and social issues in the classroom; (7) the responsibility of teachers to refrain from using vulgar or profane language; and (8) types of teacher behaviors generally considered to exceed the limits of academic freedom. In addition, three defenses are offered for teachers whose controversial actions are challenged in the courtroom. Nine related print resources concerning the academic freedom of teachers are followed by a listing of organizational resources. (LH)

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THE TEACHER AND ACADEMIC FREEDOM

ERIC FACT SHEET NO. 1

Mar 81

ERIC Clearinghouse for Social Studies/Social Science Education
Boulder, Colorado

SO 014 790

ERIC Clearinghouse for Social Studies/Social Science Education
855 Broadway
Boulder, Colorado 80302

FACT SHEET NO. 1
March 1981

The Teacher and Academic Freedom

Who determines what and how a teacher teaches? How much freedom do individual teachers have in choosing content, methods, and materials? When is a teacher *not* protected by the concept of academic freedom?

Numerous factors influence the school curriculum: the interests and needs of students, the concerns and prejudices of the local community, school board directives, departmental curriculum guidelines, state mandates, federal laws and requirements, pressures from political and special-interest groups, and, not least, the nature of the available curriculum materials.

In spite of all these sometimes conflicting factors, teachers themselves have a great deal of leeway in deciding what should be taught and how. However, freedom to teach is not absolute; statutes and court decisions have established limitations on teachers' freedom. Although these limitations may vary somewhat from state to state, the general patterns which have emerged in recent years (or which seem to be in the process of emerging) are summarized in this fact sheet.

Who has the right to decide what should be taught?

The school board, representing the local community, has the primary responsibility for defining the curriculum and setting policy. States are also empowered to impose restrictions and guidelines on the curriculum, although they vary widely in the extent to which they involve themselves in shaping local curriculum policies. Nevertheless, recognizing that public education ought not to be totally constricted by the narrow perspectives and interests of a particular locality, courts at all levels have upheld the rights of teachers to ensure that the classroom remains "a marketplace of ideas." Academic freedom is the judicial refuge of teachers when, in legitimately representing the broad interests of education, their instructional choices inadvertently offend the local community. In deciding cases related to this issue, however, the courts must always balance the broad concept of academic freedom against the legitimate interest of the immediate community in controlling the curriculum.

To what extent can school districts impose specific restrictions on subjects that are taught or discussed in the classroom?

Courts have generally rejected (or declined to rule on) challenges to the right of a state or school district to specify content areas which must be taught or to prohibit certain topics, *provided that such restrictions are reasonable, not unduly narrow or rigid, and not in violation of guarantees in the U.S. Constitution.* Every course has content and goals which are more or less specified in advance, and teachers are expected to stay generally within the curriculum guidelines. Therefore, if a teacher's behavior is to be protected by academic freedom, there must be some legitimate link between that behavior and the basic curriculum. Discussion of controversial political viewpoints may be considered legitimate in the context of a history or political science class, but a teacher who persists in injecting such content into a math or psychology class is asking for trouble. Teachers who continue to use methods and materials judged inappropriate by the school board — after explicit instructions to desist — are also courting dismissal, and the courts are unlikely to intervene. However, in most cases the school board must demonstrate that the teacher had been given ample and timely notice that the specific behavior at issue was unacceptable.

Do teachers have the right to refuse to teach content that violates their personal beliefs?

Generally, no. A kindergarten teacher in Chicago refused to teach her students the Pledge of Allegiance and to conduct activities related to commonly observed holidays, on the grounds that doing so would violate her religious beliefs as a Jehovah's Witness. She was fired and the courts upheld her dismissal, observing that the teacher had the right to refuse to say the Pledge of Allegiance herself but no right to disregard the prescribed curriculum.

Does a teacher have the right to invite a controversial speaker — for example, a member of the Communist party — into the classroom?

The appearance in a school of speakers representing extreme or controversial political positions often provokes a storm of protest from the community. In the interest of avoiding trouble, many school districts have attempted to ban certain kinds of outside speakers or to prohibit all political speakers. Where such blanket prohibitions have been challenged in the courts, they have usually been overturned, especially in states that mandate the teaching of government. Exposing students to a variety of political viewpoints, in the context of a course on politics and government, is an appropriate educational strategy. Whether teachers in other subject areas would be supported in attempts to exercise this right is questionable, however.

Can a state or school district prohibit a teacher from using materials and methods other than those officially approved or adopted?

Teachers, as professionals, are presumed to have some latitude in deciding which materials and methods best serve their instructional purposes. In fact, the main constraint on the selection of materials is probably economic: unless they make their own materials, most teachers are restricted to those resources which are supplied by the district. Few district officials or supervisors attempt to interfere with a teacher's choice of materials, methods and strategies *so long as the teacher is following accepted professional practices.*

The area in which teachers' discretion is most apt to be challenged is in the assignment of outside readings. Here, the pressure is likely to come from the outside community rather

Much of the information in this fact sheet was taken from *Teachers Have Rights Too: What Educators Should Know About School Law*, by Leigh Stelzer and Joanna Banthin (Boulder, Colo.: Social Science Education Consortium, ERIC Clearinghouse for Social Studies/Social Science Education, and ERIC Clearinghouse on Educational Management, 1981), which may be ordered from the Social Science Education Consortium, 855 Broadway, Boulder, CO 80302 (ISBN 0-89994-249-0; $7.95).

than from within the district; during recent years the efforts of self-appointed moral arbiters to control and censor student materials have become observably more strenuous. Unfortunately, teachers cannot always rely on support from school board members, who may be more concerned with placating voters than with taking a strong stand on behalf of academic freedom. Furthermore, the courts seem increasingly reluctant to intervene in cases involving the right of school boards to make curriculum decisions. The right of a teacher to exercise professional judgment in making reading assignments, given the prevailing political and social climate, may be in serious jeopardy, and it is no longer valid to assume that this right will be upheld by the courts.

The courts have been generally consistent in ruling that teachers must conform to *reasonable and specific instructions* from their supervisors in regard to methods and materials. Although there are limits to the discretion of school officials, their authority to determine the basic curriculum has been recognized at all levels of the judiciary. Teachers who deliberately act in defiance of specific instructions from their supervisors, when those instructions are reasonable and legitimate, can expect no help from the courts.

Are teachers free to express their personal opinions about controversial political and social issues in the classroom, even when those opinions are in conflict with the prevailing views in the community?

Freedom of speech does not stop at the schoolhouse door. In the well-known Tinker case, the court ruled that schools cannot suppress the expression of opinions by students unless the students' actions threaten to substantially interfere with the educational process. The expression of opinion by a teacher should be judged by a similar criterion. Whether sharing one's personal views with students is appropriate depends on a number of factors: the relevance of the issue to the subject matter of the course, the maturity of the students, the emotional tone and language used by the teacher, and the general "openness" of the classroom climate. Obviously, a teacher who spends half of a science class period delivering a political harangue would be "interfering with the educational process." If the expression of opinions by teachers has the effect of upsetting students or inciting them to insubordination or misbehavior, the First Amendment provides no refuge.

It should go without saying that, because any adult who functions as a teacher or leader of youth wields great potential influence on the attitudes and opinions of young people, teachers must take special care not to abuse this power. Regardless of how the courts decide such matters, many educators believe that teachers who express their personal opinions in the classroom are guilty of unprofessional conduct.

Do teachers have the right to use profane or vulgar language in the classroom?

Generally, no. Although the context in which such language is used may be a deciding factor, the courts have tended to support the position that profanity and vulgarity have no place in the classroom. Even teachers who have tried to develop lessons aimed at demonstrating the deficiencies of profane and vulgar language have found themselves in trouble. Although it may be difficult to avoid referring to offending terms in the course of discussing student materials that contain profane or vulgar language, teachers who do so may be on very shaky ground if their actions come under scrutiny. Regardless of how commonly students use such language, profanity coming from a teacher in class has a vastly greater shock value than profanity voiced by students in the cafeteria or locker room.

What kinds of behavior are generally considered to exceed the limits of academic freedom?

Although the courts will usually take into consideration the specific circumstances related to the teacher's controversial behavior, as a general rule the following actions are held to exceed the limits of academic freedom:

— Use of profane or vulgar language in the classroom.

— Actions which disrupt the educational process or incite students to do so. Courts have consistently ruled that there is *no* legitimate excuse for such actions.

— Deliberate defiance of clearly stated mandates and instructions regarding content, methods, and materials. Such behavior is considered insubordination, rather than a legitimate exercise of academic freedom.

What defenses are most powerful in protecting teachers' academic freedom?

A stong case can be made that a teacher's controversial actions represent a legitimate exercise of academic freedom if the following arguments can be supported:

— That the students involved are sufficiently knowledgeable and mature to deal with the controversial methods or materials.

— That the teacher is following accepted professional practices and has the support of peers and colleagues.

— That the controversial actions or materials are relevant to the subject matter of the course or lesson.

The rights of teachers who can meet one or more of these criteria have generally been upheld by the courts.

Related Print Resources

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Ochoa, Anna S. "Censorship: Does Anybody Care?" *Social Education* 43, no. 4 (April 1979). EJ 198 695.

Rubin, David. *The Rights of Teachers*. Washington, D.C.: National Education Association, 1972.

Stelzer, Leigh, and Joanna Banthin. *Teachers Have Rights, Too: What Educators Should Know About School Law*. Boulder, Colo.: Social Science Education Consortium, ERIC Clearinghouse for Social Studies/Social Science Education, and ERIC Clearinghouse on Educational Management, 1981.

Organizational Resources

American Civil Liberties Union
22 E. 40th St.
New York, NY 10016
212/725-1222

American Federation of Teachers
11 Dupont Circle, N.W.
Washington, DC 20036
202/797-4400

National Education Association
1201 16th St., N.W.
Washington, DC 20036
202/833-4000

National Organization on Legal Problems of Education
5401 S.W. Seventh Ave.
Topeka, KS 66606
913/273-3550